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Via Certified Mailing – Return Receipt

February 25, 2016

Ms. Cathy Studebaker
Mr. Shawn Studebaker
Owner or Managing Agent
Randall Sand & Gravel
214 West River Lane
P.O. Box 339
Garberville, CA 95542-0330

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act (Clean Water Act)**

Dear Ms. Studebaker, Mr. Studebaker, or owner or managing agent:

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”) 33 U.S.C. §1251 *et seq.*, that River Watch believes are occurring at the Randall Sand & Gravel facility owned and operated by Cathy Studebaker and Shawn Studebaker (“the Facility”) located at 214 West River Lane in Garberville, California. Notice is being sent to you as the responsible owners, operators, and managers of the Facility and real property. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Facility into the South Fork of the Eel River, a CWA § 303(d) waterway impaired for sediment and temperature.

CWA §301(a), 33 U.S.C. §1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual NPDES permit or a general NPDES permit issued pursuant to CWA §402(p), 33 U.S.C. §1342. CWA §402(p), 33 U.S.C. §1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA §402, the Administrator of the U.S.

EPA has authorized California's State Water Resources Control Board to issue NPDES permits including general NPDES permits in California.

The State Water Resources Control Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA §402(p). In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

CWA §505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the Facility. Consequently, Randall Sand & Gravel, Cathy Studebaker, and Shawn Studebaker (collectively, the "Discharger") is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA §301(a), §402(p), and §505(a)(1), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the North Coast Regional Water Quality Control Board ("RWQCB") Water Quality Control Plan or "Basin Plan."

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA §402(p) and violations of NPDES Permit No. CAS000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the "General Permit") relating to the recycling services and operations at the Facility.

The Discharger, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent ("NOI") agreeing to comply with the terms and conditions of the General Permit. The State Water Resources Control Board approved the NOI on or about April 30, 2004 and the Discharger is assigned Waste Discharger Identification ("WDID") number 1 12I018770. River Watch, on the basis of eye-witness reports and records publicly available and/or records in the possession and control of the Discharger, contends that in the continuing operation of the Facility, the Discharger has failed and is failing to comply with the terms and conditions of the General Permit – specifically the requirements governing sampling and analysis, requiring the preparation and implementation of effective Best Management Practices ("BMPs") in its Storm

Water Pollution Prevention Plan ("SWPPP"), and ensuring the elimination of all non-authorized storm water discharges from the Facility.

Compliance with these General Permit requirements is central to the effectiveness of the General Permit program. River Watch contends the Discharger has failed and is failing to comply with the following specific General Permit annual reporting requirements for reporting years 2012-2013, 2013-2014, 2014-2015, and 2015-2016 (to date) as follows:

a. Failure to Comply with Sampling Requirements in the 2012-2013, 2013-2014 and 2014-2015 Annual Reporting Years

The General Permit in effect prior to July 1, 2015 (Order No. 97-03-DWQ) required all non-exempt facilities to collect and analyze samples from two annual storm events. A review of the past three Annual Reports identifies the following alleged violations¹:

- Annual Report 2012-2013: The Facility states in the Report that it provides two (2) samples from five (5) sampling locations (Monitoring and Reporting Program, Sampling and Analysis Results, Sections E.1. and E.3). The Report, however, identifies sampling from the October 24, 2012 qualifying storm event for "Quarry Site B" only, and from the November 20, 2012 storm event for "Quarry Site B" and "Yard Site 2" only. The Facility states in the Report (General Information, A. Facility Information) that its operations are identified under SIC Codes 3273 and 1442. These SIC Codes require sampling of "Table D" parameters iron and N&N. The Report, however, identifies sampling for N&N only, failing to provide sampling data for iron (Monitoring and Reporting Program, Sampling and Analysis Results, Section E.10). In addition, the Facility NOI and Section 3.1 of the current SWPPP state that its operations include those under SIC Code 2875, which requires sampling for lead, zinc, and phosphorus in addition to N&N and iron. No sampling is provided for lead, zinc, phosphorus or iron. Sampling at Quarry Site B from the October 24, 2012 storm event identifies TSS (380 mg/L) and N&N (6.0 mg/L). Sampling at Quarry Site B from the November 20, 2012 storm event identifies TSS (300 mg/L) and N&N (2.0 mg/L). Sampling at Yard Site 2 from the November 20, 2012 storm event identifies TSS (120 mg/L) and N&N (1.4 mg/L). All of these sampling results are in excess of the Annual NAL, Benchmark, and the California Toxics Rule ("CTR") limits for these pollutants.
- Annual Report 2013-2014: The Facility states in the Report that it provides two (2) samples from five (5) sampling locations (Monitoring and Reporting Program, Sampling and Analysis Results, Sections E.1. and E.3). The Report, however, identifies sampling from the January 29, 2014 qualifying storm event for "Quarry Site B" and "Yard Site 3" only, and from the February 27, 2014 storm event for "Quarry Site B," "Yard Site 2," and "Yard Site 3" only. The Facility states in the Report (General Information, A. Facility Information) that its operations are identified under SIC Codes 3273 and 1442. These SIC Codes require sampling of "Table D" parameters iron and N&N. The Report,

¹ Note that the RWQCB provided the Discharger with letters on June 3, 2103, July 15, 2013, and October 17, 2014 identifying discharges of TSS above the EPA Benchmark.

however, identifies sampling for N&N only, failing to provide sampling data for iron (Monitoring and Reporting Program, Sampling and Analysis Results, Section E.10). In addition, the Facility NOI and Section 3.1 of the current SWPPP state that its operations include those under SIC Code 2875, which requires sampling for lead, zinc, and phosphorus in addition to N&N and iron. No sampling is provided for lead, zinc, phosphorus or iron. Sampling at Quarry Site B from the February 27, 2014 storm event identifies TSS (130 mg/L) and N&N (1.4 mg/L). Sampling at Yard Site 2 from the February 27, 2014 storm event identifies TSS (150 mg/L). All of these sampling results are in excess of the Annual NAL, Benchmark, and the California Toxics Rule ("CTR") limits for these pollutants.

- Annual Report 2014-2015: The Facility states in the Report that it failed to sample storm water from any storm events during this reporting year. Publicly available rain data during this period identifies dates on which rainfall in excess of .10 of an inch (a qualifying storm event) was reported in Garberville, dates when storm water samples should have been collected and analyzed. The failure to do so in this case is a violation of the General Permit.

b. Failure to Provide Sampling for 2015-2016 Annual Reporting Year is a Storm Water Violation

The General Permit in effect beginning July 1, 2015 (Order No. 2014-0057-DWQ), imposes new sampling and reporting requirements. Under Section XI.B. ("Sampling and Analysis"), the Discharger must collect and analyze storm water samples from two (2) qualifying storm events within the first half of each reporting year (July 1 to December 31), and from two (2) qualifying storm events within the second half of each reporting year (January 1 to June 30). The sampling and analytical results must be reported via SMARTs within thirty (30) days of obtaining the results. This General Permit requirement is specifically noted in Section 5.3.5 of the Discharger's June 25, 2015 SWPPP titled "Randall Sand & Gravel Storm Water Pollution Prevention Plan."

A review of SMARTs database on February 24, 2016 revealed that the Discharger has failed to provide any of the mandated samples from qualifying storm events to date during the 2015-2016 Annual Reporting year. The failure to do so in this case is a violation of the General Permit.

2. *The activity alleged to constitute a violation.*

The Discharger's operations, defined in Attachment N of the current SWPPP as "quarry extraction, gravel bar skimming, gravel processing and concrete production operations" ... "located along the along the South Fork of the Eel River," and classified on the NOI as SIC Code 3273 ("Ready-Mixed Concrete"), 1442 ("Construction Sand and Gravel"), and 2875 ("Fertilizers, Mixing Only")² include a range of "Potential Pollutant Sources" extensively listed in Attachment

² Note that Section 3.1 of the current SWPPP also includes SIC Code 1429 "Crushed and Broken Stone, Not Elsewhere Classified," which was not identified in the NOI nor authorized by the RWQCB in its April 30, 20014 letter to the Discharger.

N of the current SWPPP as gravel wash sediment, concrete wash sediment, gravel and sand, hard quarry rock, topsoil, sediment from basin, diesel fuel, lubricants/hydraulic fluid, cement, cement activities, waste oil, solvents/cleaners, batteries, oxygen tanks, and acetylene tanks.

The work at the Facility is conducted both indoors and outdoors, where it is subject to rain events. Because there is no State Water Resources Control Board or RWQCB exemption from the collecting and analyzing of the range of pollutants identified above, and without implementing sampling and analysis, there is no accurate measure by which to determine whether required Best Management Practices ("BMPs") are both implemented at the Facility and effective to ensure no unlawful discharge(s) of the pollutants identified above from the Facility discharge to the Eel River – a water of the United States.

To properly regulate these activities and control the discharge of these types of pollutants, the State Water Resources Control Board requires industrial facilities to obtain and comply with the terms and conditions of an individual NPDES permit or seek coverage under the General Permit (or obtain a proper exemption under the terms of the General Permit from its requirements). As stated above, review of the public record by River Watch reveals that the Discharger obtained coverage under the General Permit for the Facility, but fails to comply with its environmentally protective requirements, in particular the mandated sampling and analysis of storm water discharges from the Facility.³

Note that in addition to the pollution controls in the General Permit, the RWQCB has established water quality standards applicable to facilities such as that operated by the Discharger. The North Coast Regional Board's Basin Plan includes both a narrative toxicity standard and a narrative oil and grease standard, providing that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides and other hydrocarbons.

Finally, full compliance with the strict terms of the General Permit is essential to ensure protection for salmonids and their critical habitat in the Eel River. The neighboring waterways to Randal Sand and Gravel site include sensitive areas federally protected under the Endangered Species Act. There is no record of Randal Sand and Gravel performing any analysis of its impacts on the critical habitat of protected species, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of its operations.

³ A review of photographs of the Facility's operations on the SMARTs database identify a critical need for this mandated sampling and analysis. Photographs reveal that process and storm waters are discharged to settling basins located at the Facility. The settling ponds appear to be hydrologically connected with waters of the United States. These percolation ponds do not meet the California Water Quality requirements for protection of tributary ground waters. Pollutants discharged to these ponds migrate into the unconfined aquifer which is either tributary to or part of the affected waters of the United States.

3. *The person or persons responsible for the alleged violation.*

The persons and entities responsible for the alleged violations are Cathy Studebaker, Shawn Studebaker, Owner or Managing Agent, referred to collectively herein as the Discharger.

4. *The location of the alleged violation.*

The location or locations of the various violations is the permanent address of the Facility at 214 West River Lane in Garberville, California, including the waters of the South Fork of the Eel River – a water of the United States.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is from February 24, 2011 to February 24, 2016. River Watch will from time to time further update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, Public Benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. River Watch's northern California mailing address is 290 South Main Street, #817, Sebastopol, California 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd., #422, Los Angeles, California 90043. River Watch is dedicated to protecting, enhancing and helping to restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Facility:

1. Prohibition of the discharge of pollutants including, but not limited to:

- pH, total suspended solids, total organic carbon or oil & grease (the standard pollutants);
- nitrate and nitrite nitrogen, which is the specific General Permit Section XI. (Monitoring) "Table 1: Additional Analytical Parameters" required to be sampled for facilities identified under SIC code 1442;
- iron, which is the specific General Permit Section XI. (Monitoring) "Table 1: Additional Analytical Parameters" required to be sampled for facilities identified under SIC code 3273;
- nitrate and nitrite nitrogen, iron, lead, zinc, and phosphorus, which are the specific General Permit Section XI. (Monitoring) "Table 1: Additional Analytical Parameters" required to be sampled for facilities identified under SIC code 2875; and
- all "Potential Pollutant Sources listed in Attachment N of the Discharger's current SWPPP.

2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's Industrial Stormwater Fact Sheet Series:

- "Sector C: Chemical and Allied Products Manufacturing" (EPA Office of Water, EPA-833-F-06-018, December 2006 (https://www3.epa.gov/npdes/pubs/sector_c_chemical.pdf);
- "Sector E: Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing" (EPA Office of Water, EPA-833-F-06-020, December 2006 (https://www3.epa.gov/npdes/pubs/sector_e_glass.pdf); and
- "Sector J: Mineral Mining and Processing Facilities" (EPA Office of Water, EPA-833-F-06-025, December 2006 (http://www.epa.gov/sites/production/files/2015-10/documents/sector_j_mineralmining.pdf).

3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit (including the mandate for sampling the "First Flush"), at location(s) selected to avoid background contamination of iron and aluminum.

4. Preparation and submittal to the RWQCB of a "Reasonable Potential Analysis" for the Facility and its operations.

5. Preparation of further updates to the Facility's June, 2015 SWPPP that includes, but is not limited to, additional BMPs necessary to address any violations identified by required sampling and analysis.

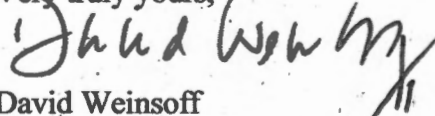
CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the Discharger to contact River Watch within **20 days** after receipt of this Notice Letter to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Facility. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating that the Discharger is in compliance with the strict terms and conditions of the General Permit, River Watch intends to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



David Weinsoff

DW:lhbm

Service List

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